

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,)	
)	
Respondent.)	
)	
vs.)	No. SC 85765
)	
MICHAEL CRAWFORD,)	
)	
Appellant.)	

**APPEAL TO THE MISSOURI SUPREME COURT FROM THE
CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION TWELVE
THE HONORABLE STEVEN H. GOLDMAN, JUDGE**

**JOINT BRIEF OF AMICUS CURIAE
IN SUPPORT OF MICHAEL CRAWFORD**

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Jurisdictional Statement

Amicus Curiae adopt the jurisdictional statement of Defendant/Appellant Michael Crawford.

Statement of Facts

Amicus Curiae adopt the statement of Facts of Defendant/Appellant Michael Crawford.

Point Relied On

The trial court plainly erred in failing to sustain defendant/appellant's motion to suppress identification evidence in that such evidence was obtained in violation of defendant/appellant's right to counsel arising under Mo. Const. Art. 1 §18(a) as defined by § 544.170 R.S.Mo.

Ex parte Stone, 255 S.W. 2d. 155, 157 (Mo. App. 1953)

Mo. Const., Art. 1 §18(a)

§ 544.170 R.S.Mo.

Argument

The trial court plainly erred in failing to sustain defendant/appellant's motion to Suppress identification evidence in that such evidence was obtained in violation of defendant/appellant's right to counsel arising under Art. 1 §18(a) of the Missouri Constitution as defined by § 544.170 R.S.Mo.

Even though this court reviews this point for plain error under Rule 30.20, this is not a close case. In Missouri, an arrest and incarceration triggers the right to counsel. By statute, incarceration has been defined as a critical stage of a criminal prosecution. Section 544.170 provides in pertinent part:

- (4) Any person who violates the provisions of this section, by refusing to release any person who is entitled to release pursuant this section, or **by refusing to permit a confinee to consult with counsel or others persons** for who transfers any such confinee's to the custody or control of another, or to another place, or falsely charges such a person, with intent to avoid the provisions of this section, is guilty of a Class A misdemeanor. (emphasis added).

Such has been the law for more than one hundred and twenty five years. Ex parte Stone, 255 S.W. 2d 155, 157 (Mo. App. 1953) (tracing 70 year history of § 544.170).

Before the lineup, the State had actual knowledge that counsel and the accused wanted to consult during the lineup. The refusal to permit counsel to be present was a "refusal to permit a confinee to consult with counsel."

Given the trend in prosecutions based upon forensic evidence, counsel must be allowed access to evidence, such as viewing a lineup. See Kyles v. Whitley, 514 U.S. 419 (1995) (defendant allowed to present defense based upon the negligence and good faith of prosecution). Here, without counsel at the lineup, defendant was prejudiced because his attorney was unable to gather evidence relating to the identification procedures used at the lineup and could not present that evidence at the hearing of his motion to suppress. Accordingly, this court must reverse and grant defendant/appellant a new trial.

Conclusion

For the reasons stated above, this court should reverse defendant/appellant's conviction and remand for new trial.

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Certificate of Compliance and Service

I hereby certify as follows:

The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2000, in Times New roman size 13-point font. According to MS Word, excluding the cover page, the signature block, this certificate of compliance and service, and the appendix, this brief contains 441 words, which does not exceed the 15,500 words allowed for appellant's brief.

The floppy disc filed with this brief contains a copy of this brief. It has been scanned for viruses using a Norton Antivirus program. According to that program, the disc is virus-free.

True and correct copies of the attached brief and floppy disc were mailed this 17th day of March, 2004 to Ms. Amy Bartholow, Assistant Public Defender, 3402 Buttonwood, Columbia, MO 65201-3724; Mr. Jeremiah W. Nixon, Attorney General, P.O. Box 899, Jefferson City, MO 65102; and Ms. Karen Kramer, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102.
